IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7098 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HV LAKUM

Versus

STATE OF GUJARAT

Appearance:

MR ND NANAVATI for Petitioners

MR DP JOSHI, ASST. GOVT. PLEADER for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 08/09/2000

ORAL JUDGEMENT

The petitioner has challenged the inaction of the respondent in not making appointment from the select list pursuant to the advertisement dated 16.4.1989, Annexure 'C'.

#. The petitioner has come out with a case that in response to the advertisement published in Jansatta local daily newspaper published from Ahmedabad on 16.4.1979, applications were invited for Gram Sevaks and Talati-cum-Mantri. It is the case of the petitioner he submitted application for appointment in Surendranagar District. So far as Surendranagar is concerned, from the advertisement it appears that in all 91 vacancies were there. 57 vacancies were unreserved and the rest were for reserved categories under different heads.

#. It is contended by the petitioner that the petitioner was empanelled, and, therefore, he has right to get appointment. He has further contended that whenever there is a vacancy, the respondents are dutybound to appoint the petitioner on the post which may have fallen vacant. Anyhow, it is true that the advertisement was given as indicated hereinabove. It is also clear that the advertisement was in all for filling up 91 posts. After the posts are filled in, the select list cannot be made operative. What the petitioner contends is that the authorities have continued to operate the select list for a pretty long period, they cannot all of a sudden stop the operation of the select list. This argument made by the petitioner cannot be accepted in view of a catena decisions of the Apex Court.

#. The Apex Court in the case of STATE OF BIHAR vs. SECRETARIAT ASSISTANT SUCCESSFUL EXAMINEES UNION 1986 & ORS. reported in AIR 1994 SC 736 has pointed out as under in paragraph 10 :-

> "It is now well settled that a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purpose of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rule says to the contrary. (See Shankaran Dash v. Union of India 1991 (3) SCC 47 : AIR 1991 SC 1612 and Sabita Prasad v. State of Bihar 1992 (3) Scale 361.

#. In the above case, there was carelessness of the State in holding examination two years after the publication of advertisement and further, declaration of the result almost three years after holding the examination and not issuing any fresh advertisement during the said period. The Court pointed out that this

fact does not give a right to all the empanelled candidates on the select list to be appointed on the date of publication of their results that is, after four to five years from date of holding of examination. The Court further held that the State is not expected to act in such a leisurely manner and treat the matter of selection for appointment to services in such a casual manner.

#. In the instant case, after the examination and the appointment of the person who were in the select list it was absolutely necessary for the State to invite further application and hold the examinations, and after the examinations, it was necessary for the State to select the candidate so empanelled.

#. In the case of SURINDER SINGH vs. STATE OF PUNJAB reported in (1997) 8 SCC 488, the Apex Court pointed out that the waiting list cannot be used as a perennial source of recruitment for filing up the vacancies not advertised. The candidates in the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative. The candidate included in the waiting list cannot claim appointment on the ground that the vacancies were not worked out properly.

#. In the case of GUJARAT STATE DY. EXECUTIVE ENGINEERS' ASSN. VS. STATE OF GUJARAT reported in 1994 Supp (2) SCC 591 the Apex Court has explained how long a waiting list can be made operative and how it should operate in the service jurispudence. It cannot be used as a perennial source of recruitment for filling up the vacancy not advertised.

#. In the case of STATE OF BIHAR vs. MADAN MOHANSINGH reported in AIR 1994 SC 765, the Apex Court considered the question about select list and held that once on the existing vacancies persons are appointed, the list gets exhausted and should not be operated for filling up future vacancies or subsequent vacancies. In paragraph 7 of the judgment, the Apex Court held that :-

> "The temporary vacancies arose subsequently but even otherwise in the view we are taking namely that the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list prepared on the basis of the written test as well as the viva voce will

hold good only for the purpose of filling up those 32 vacancies and no further because the said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process."

##. In Special Civil Application No. 6634 of 1989, decided by a Division Bench of this Court on 13.09.1996 while dealing with a similar question observed as under in paragraph 19 of the Judgement:

" .... a select list duly prepared must be co-terminous with the number of vacancies which are to be filled in and such a list must get exhausted and come to an end. In our view, in the absence of statutory Rules, once such vacancies are filled in, the select list should get exhausted and the list cannot be and should not be held operative for vacancies that may arise in future, otherwise it would obstruct the right of other candidates. .."

##. In view of this, it is very clear that in all 91 posts were advertised and the candidates being appointed, the list cannot be made operative, and, therefore, the petitioner has no right to claim that he should be appointed as he was empanelled in the list. The petition is rejected on this ground. Rule is discharged. No order as to costs.

(B.C. PATEL, J.)

csm./ ----------